نوقشت هذه الأطروحة (أثر فوات محل العقد في المعاملات المالية في الفقه الإسلامي) وأجيزت بتاريخ ٢٠٠٦/١٢/٥

التوقيع

أعضاء لجنة المناقشة

ر ناف

الأستاذ الدكتور محمد أحمد القضاة ، مشرفاً

أستاذ الفقه المقارن

عبيام الهيدي

الأستاذ الدكتور عبد الله إبراهيم زيد الكيلاني ،عضوأ

أستاذ الفقه وأصوله

الدكتور محمد خالد منصور ، عضواً

أستاذ مشارك الفقه وأصوله

TATES

الدكتور زكريا محمد القضاة ، عضواً

أستاذ مشارك الفقه المقارن



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٣- ما فيه مضرة على الساكن . كما لو انهدم يسير من الجدر ان وأضر به . فللمستأجر الخيار .
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المبحث الثاني: أثر فوات محل عقد الكفالة

وفيه مطلبان:

المطلب الأول: أثر فوات محل عقد الكفالة بالمال

المطلب الثاني: أثر فوات محل عقد الكفالة بالنفس

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THE IMPACTOT TERMINATION OF THE OBJECT OF THE CONTRACT IN THE FINANCIAL TRANSACTIONS IN ISLAMIC JURISPRUDENCE

By

Ahmad Shehdeh Ali Abu Sarhan Supervisor De. Mohammad Ahmad Alqudah, Prof Abstract

This study discusses the speech about the impact of termination of the object of the contract in the financial transactions in Islamic Jurisprudence. It displays the impact of the object of the contract in the two –sided obligatory contract, the one-sided obligatory contract and the contract that is not obligatory to both sides. It also displays the three kinds included, the opinions of the jurisprudents, their evidences, their arguments and their preponderant opinions. Moreover, it begins with an introduction that defines the contract and clears out its fundamental bases and its parts besides a preliminary step in the termination of the object of the contract and lastly defines the financial transactions.

Through this study, it has become clear that the impact of termination of the object of the contract differs from one contract to another. It may also differ in the very same contract according to the differences of the impact of termination. This impact may or may not result in the cancellation of the contract. The states in which the contract is cancelled are either when the material sold is spoilt owing to a heavenly bane before receiving its value, or when all the property of the company and the sleeping partnership are spoilt. The state in which the contract is not cancelled is either when all or some of the material sold is spoilt after receiving the value or when the bill of exchange has terminated accidentally. Its impact is that the contract becomes either unobligatory, that is the contractor has the choice to cancel it or to carry it out, or the contract becomes obligatory. It is unobligatory only when all or some of the material sold has been damaged by the seller or any foreign agent before receiving its value and also when some of the rented object has

become useless owing to its damage. It is obligatory only when all or some of the material sold has been spoilt by the buyer before or after receiving its value. This may result in a guaranty , that is to pay the value of damage or to pay the countervalue. It is guaranteed if the mortgaged object, the borowed, the deposited or the power of attorney has been spoilt by tresspassing or carelessness by the holder of the material . It is not guaranteed when the damage in the foregoing examples has not been caused by tresspassing or carelessness. Thus, the countervalue may become due or may become undue. It becomes due only when the rented material has spoilt after receiving its value and after a time passed to which there is a countervalue in respect of the period passed. It is undue if the rented object has damaged before receiving its value or immediately after it and before a time passed to which there is a countervalue, or it has damaged after receiving the value and after a time passed to which there is a countervalue in respect of the remaining period.